



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

Milwaukee County Department of Human Services, Petitioner

vs.

DECISION ON REHEARING

██████████ Respondent

Case #: FOF - 170040

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Pursuant to petition filed November 6, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on Tuesday, February 23, 2016 at 1:30 PM, by telephone. Previously, a hearing on the same matter was held on December 14, 2015, but the respondent did not appear. Evidence provided by Department worker ██████████ was accepted, and a decision was issued by this Judge that sustained the Department's request for a one year sanction. After the decision was issued, the respondent requested a rehearing, stating that she had not received the hearing notice. Thus, the hearing was repeated on February 23, 2016.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Mrs. ██████████, IM Spec. Adv. (recording of her 12/14/15 presentation)  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, Wisconsin 53205

Respondent:

██████████  
██████████  
██████████

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ADMINISTRATIVE LAW JUDGE:  
Nancy Gagnon  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits as a one-person household in Milwaukee County from August 1, 2011 through June 30, 2012.
2. Due to the respondent's enrollment in the FS program, the respondent was issued a QUEST card which the respondent utilized to access her monthly FS allotment provided to respondent. QUEST cards are electronic benefit transfer cards that replaced food stamp coupon booklets.
3. On December 7, 2011, and thereafter, the respondent's QUEST card was utilized in a transaction involving [REDACTED] LLC (JHD). *E.g.*, \$200 on December 7, 2011, and \$200 on June 7, 2012.
4. JHD was a licensed vendor of the United States Department of Agriculture Food and Nutrition Service, which enabled it to redeem QUEST cards.
5. JHD was classified as a mobile vendor and operated out of private vehicles. Between August, 2010 and January, 2013, JHD redeemed approximately \$778,000 in QUEST benefits from food stamp benefit recipients who were not purchasing food, but instead receiving cash for providing access to their QUEST benefits.
6. On or about February 15, 2013, [REDACTED], [REDACTED], doing business as JHD, pled guilty to a charge of unlawfully purchasing and redeeming FS benefits. [REDACTED] admitted that no food or groceries were ever provided by [REDACTED] and/or JHD in exchange for Quest benefits.
7. On November 12, 2015, the petitioner prepared an *Administrative Disqualification Hearing Notice* alleging that respondent intentionally transferred FS benefits to JHD, in the total amount of \$400, in exchange for cash payment(s). That Notice set a hearing in Milwaukee for December 14, 2015, at 1:45 p.m. The Department appeared and presented its evidence (testimony and documentation); the respondent did not appear. A decision sustaining the Department's one year sanction request was issued on December 29, 2015. The respondent later telephoned this office and requested a rehearing. That request was granted, and on January 12, 2016, this office mailed notice of a telephonic hearing for February 23, 2016. The respondent participated in the February 23 hearing.

### **DISCUSSION**

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

Wisconsin statutes prohibit the intentional exchange of FS benefits for cash. The law specifically provides that to traffic food stamp program benefits means to do any of the following:

Buy, sell, steal, or otherwise accomplish the exchange of, directly, indirectly, in collusion with others, or individually, food stamp program benefits issued and accessed through the electronic benefit transfer program under s. 49.797, or by manual voucher and signature, for cash or other consideration that is not food.

Wis. Stat. §946.92(1)(dm); *see also*, 7 C.F.R. § 271.5(b).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact.

*State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

## CONCLUSION

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. The respondent testified that she lived with her sister during the transaction months, and that she regularly gave her Quest card to her sister to buy groceries for household use. She believes that her card was inappropriately used by someone else whom she allowed use the card, with those persons being her sister, father, and the sister's girlfriend. If that is what happened, it is also violation of FoodShare rules. The Quest card is only to be used to buy groceries exclusively used by the cardholder's *FS household*. The respondent was a household of one, so her sister should not have been using the card or sharing in its benefits. The respondent went on to say that her sister had her own Quest card during the period. This points to further fraud. If they were living together and sharing food, they should have been in the same FS household. This would have probably lowered their total benefits. For instance, the maximum allotment for two persons is currently \$357, while the allotment for one person is currently \$194. Two times \$194 (\$388) is more than \$357, so it is beneficial to falsely claim to be in separate households. The respondent is not credible, and I reject her explanation for the wrongful use of her Quest card. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

## CONCLUSIONS OF LAW

1. The respondent intentionally violated, and intended to violate, the FS program rule specifying that an FS recipient shall not knowingly transfer food coupons except to purchase food.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE**, it is

## **ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

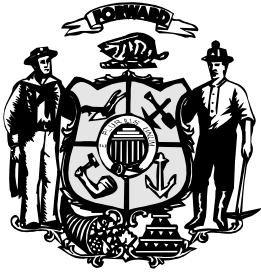
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of February, 2016

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\sNancy Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals

c: Miles - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
[REDACTED] - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 24, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]@dhs.wisconsin.gov